D.B.INCOME TAX APPEAL NO.35/2007

CIT, UDAIPUR VS. M/s AKJ GRANITES PVT.LTD.

DATE OF ORDER : 6/4/2007

HON'BLE SHRI RAJESH BALIA, J.

HON'BLE SHRI BHANWAROO KHAN, J.

Mr.K.K.Bissa, for the appellant.

Heard learned counsel for the appellant.

The following two questions are stated to be substantial questions of law arising for consideration in this appeal against the order of Income Tax Appellate Tribunal, Jodhpur Bench, Jodhpur dated 20/9/2005:

> "(i) Whether on the facts and in the circumstances of the case as well as in the law the learned Tribunal is justified in upholding the decision passed by the CIT (A) deleting the addition of Rs.21,64,500/- made by the AO under Section 68 of the Act have unexplained share application money and cash credit ignoring the substantial fact given by the AO on the basis of material available on record?
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> (ii) Whether on the facts and in the circumstances and in law the learned Tribunal was justified in allowing the relief of Rs.9,63,744/- out of trading addition of Rs.10,48,743/- made by AO by relying the decision of Howrah Trading Company vs. CIT (Cal.) reported 67 IT 582 (Cal) while approving the decision of the CIT (A) in rejecting the books result?"

So far as question no.1 is concerned, it is stated by learned counsel for the appellant that the issue embedded in the said question has already been decided by this Court and governed by the ratio laid down in Barkha Synthetic's case (**197 CTR 432**). It has been pointed out that share applications are made by number of persons, may be in their own names or benami, but the fact that share applications received from different places accompanied with share application money , no presumption can be drawn that same belongs to the assessee and cannot be assessed in his hands as his undisclosed income unless some nexus is established that share application money for augmenting the investment in business has flown from assessee's own money. In coming to this conclusion, the Court relied on CIT vs. Steller Investment Ltd. (**99 CTR (Del) 40**), which has since been affirmed by the Supreme Court in CIT Vs. Steller Investment Ltd. [**164 CTR (SC) 287**]. In view thereof, this question need not be decided again.

So far as question no.2 is concerned, it is finding of fact and no question of law is involved.

The Assessing Officer has rejected the books of account of the assessee and resorted to best judgment assessment. In arriving at best judgment assessment the Assessing Officer took the basis of applying G.P.by estimating the turn over of the assessee at 1.5 times than what was declared by the assessee and by taking the case of one M/s Anil Marbles, as

comparable case, applied the G.P. Rate of 32.42% on the estimated turn over for arriving at the gross profit.

CIT (A) has found that case of M/s Anil Marbles was not a comparable case for the purpose of lifting the GP rate to be applied to the case of the assessee by substituting the GP rate disclosed as per the books of account. It pointed out that two industries were situated at far away places from each other & M/s Anil Marbles is a settled industry whereas it is the first year of business of assessee and taking into consideration other circumstances, estimated sales at Rs.46 lacs, applied 26% of GP rate on such estimated turn over. This resulted in sustaining partly the additions made by the Assessing Officer.

The Tribunal on considering entirety of facts affirmed findings of CIT (A) in this regard.

The best judgment itself is based on estimate and cannot be scaled at exactitude. We do not find any question of law involved in this case. The circumstances considered by the CIT (A) in substituting its opinion are not irrelevant consideration for the purpose of estimating income of the assessee, and estimate made by Assessing Officer has rightly been rejected on cogent grounds.

In view of the above, no substantial question of law arises for

consideration in this appeal and the appeal is hereby dismissed.

(BHANWAROO KHAN), J. (RAJESH BALIA), J.

Pankaj Baweja.